IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 648 of 2006(B)

CMP.3380/2005 of J.M.F.C.-II, CHERTHALA

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PETITIONER:

THE DISTRICT COLLECTOR,
CIVIL STATION, ALAPPUZHA.

BY GOVERNMENT PLEADER G.P. SHRI.I.V.PRAMOD

RESPONDENTS:

RIYAS K.K., KANDATHIL HOUSE,
THRICHATTUKULAM P.O., CHERTHALA.

BY ADV. SRI.P.M.ZIRAJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No. 648/06.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE REPORT OF S.I. OF POLICE, POOCHAKKAL, DTD.12.8.05.

P1A. COPY OF THE MAHZAR.

P2. COPY OF THE REPORT OF POLICE DTD.30.8.05.

P3. COPY OF THE REPORT OF TAHSILDAR.

P4. COPY OF THE PROCEEDINGS DTD.25.8.05 OF THE DIST. COLLECTOR.

P5. COPY OF THE ORDER DTD.8.9.05.

Sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.648 of 2006

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Dated this the 3rd day of August, 2007

J U D G M E N T

This writ petition is filed by the State challenging Ext.P5 order of the Judicial First Class Magistrate-II, Cherthala, directing release of the vehicle seized by the District Collector on allegations of illegal transport of river sand. The contention is that the seizure has been made under the Kerala Protection of River Banks and Regulations of Removal of Sand Act, 2001 ("the Act" for short) and not pursuant to the provisions of the Code of Criminal Procedure. No criminal case is also pending before the JFCM Court. In such circumstances, the power to order release of the vehicle rests exclusively with the District Collector under the Act and therefore, Ext.P5 order has been passed without jurisdiction.

2. On a perusal of Ext.P5 itself it is clear that no proceedings whatsoever is pending in respect of the vehicle in

question before the JFCM Court. The proceedings before the District Collector is under the Act. Under the Act, jurisdiction exclusively rests with the District Collector for dealing with seized vehicle. Therefore, I am satisfied that Ext.P5 order has been passed without jurisdiction. Accordingly, Ext.P5 is quashed. It would be open to the District Collector to take appropriate proceedings under the Act.

Writ petition is disposed of as above.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE